

EXHIBIT 3

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1 OAKLAND, CALIFORNIA; TUESDAY, OCTOBER 18, 2005; 3:00 P.M.,
2 DEPARTMENT THREE, THIRD FLOOR; SAUNDRA BROWN ARMSTRONG,
3 JUDGE

4 -000-

5 THE CLERK: ALL RISE. THIS COURT IS NOW IN
6 SESSION. THE HONORABLE SAUNDRA BROWN ARMSTRONG PRESIDING.
7 PLEASE BE SEATED.

8 CALLING CIVIL 03-1180, VELIZ VS. CINTAS
9 CORPORATION.

10 MR. RUBIN: GOOD AFTERNOON, YOUR HONOR. MICHAEL

11 --

12 THE COURT: GOOD AFTERNOON.

13 MR. RUBIN: GOOD AFTERNOON, YOUR HONOR. MICHAEL
14 RUBIN FOR THE PLAINTIFFS.

15 THE COURT: GOOD AFTERNOON, MR. RUBIN.

16 MR. PEPICH: GOOD AFTERNOON, YOUR HONOR. STEVEN
17 PEPICH FOR CINTAS.

18 THE COURT: STEPHEN PEPICH, GOOD AFTERNOON.

19 MR. PEPICH: GOOD AFTERNOON.

20 MS. GOLDSMITH: EILEEN GOLDSMITH FOR CINTAS.

21 THE COURT: EILEEN GOLDSMITH. GOOD AFTERNOON, MS.
22 GOLDSMITH.

23 MR. DOSKER: GOOD AFTERNOON, YOUR HONOR. MARK
24 DOSKER FOR CINTAS.

25 MS. O'ROURKE: OKAY. GOOD AFTERNOON, YOUR HONOR.

1 ANGELA O'ROURKE ALSO APPEARING FOR CINTAS.

2 THE COURT: OKAY. GOOD AFTERNOON.

3 OKAY. I APPRECIATE YOUR BEING AVAILABLE THIS
4 AFTERNOON. I NEEDED A LITTLE MORE TIME TO KIND OF GO
5 THROUGH AND SORT OUT SOME OF THE MATERIAL THAT YOU ALL HAVE
6 SUBMITTED SINCE THERE IS QUITE A BIT.

7 WHAT I THOUGHT I WOULD DO TODAY IS TO KIND OF GO
8 THROUGH WITH YOU WHAT MY INCLINATIONS ARE WITH RESPECT TO
9 SOME OF THESE ISSUES, AND -- AND WHAT MY RULINGS ARE WITH
10 RESPECT TO OTHERS. AND THEN TELL YOU WHAT MY QUESTIONS ARE
11 WITH RESPECT TO OTHERS. AND THAT WAY YOU ALL CAN FOCUS YOUR
12 ORAL ARGUMENT ON -- ON ANY OR ALL OF THAT.

13 UM, FIRST OF ALL, FOR THE RECORD, IF THIS MATTER
14 COMES BEFORE THE COURT ON -- ON DEFENDANT'S MOTION TO STAY
15 PROCEEDINGS PURSUANT TO TITLE NINE, UNITED STATES CODE,
16 SECTION THREE, AS TO CERTAIN OPT-IN PLAINTIFFS WHO ARE NOT
17 SUBJECT TO THE COURT'S APRIL 5, 2004 ORDER.

18 SECOND, PLAINTIFF'S MOTION CONCERNING COMPLIANCE
19 WITH COURT ORDERS REGARDING WHICH PLAINTIFFS MUST ARBITRATE
20 AND WHICH PLAINTIFFS MAY LITIGATE THEIR NON-ERISA OVERTIME
21 WAGE CLAIMS.

22 THIRD, DEFENDANT'S MOTION TO DISMISS AS TO CERTAIN
23 OPT-IN PLAINTIFFS FOR IMPROPER VENUE. OR, IN THE
24 ALTERNATIVE, TO TRANSFER FOR IMPROPER VENUE OR, IN THE
25 ALTERNATIVE, TO TRANSFER IN THE INTERESTS OF JUSTICE AND

1 CONVENIENCE.

2 AND, FOURTH, PLAINTIFF'S MOTION FOR LEAVE TO FILE
3 A SECOND AMENDED COMPLAINT.

4 NOW, BASED UPON THE BRIEFING SUBMITTED BY THE
5 PARTIES, THE JOINT STATEMENT FILED IN SEPTEMBER, THE COURT
6 SUMMARIZES THE PERTINENT ISSUE AS FOLLOWS:

7 FIRST OF ALL, THE PARTIES, THE COURT'S
8 UNDERSTANDING IS, THE PARTIES HAVE REACHED AGREEMENT
9 REGARDING WHICH PLAINTIFFS MAY LITIGATE AND WHICH ARE
10 SUBJECT TO ENFORCEABLE ARBITRARY PROVISIONS; SPECIFICALLY,
11 (1), THE PARTIES HAVE AGREED THAT 444 PLAINTIFFS MAY
12 LITIGATE THEIR CLAIM BEFORE THIS COURT. THAT'S IN THE JOINT
13 STATEMENT.

14 WELL, IF THERE'S A DISPUTE, WE CAN SPEAK TO THAT.
15 I WANT TO SUMMARIZE MY UNDERSTANDING SO YOU ALL CAN TELL ME
16 IF THAT'S CORRECT.

17 SECOND, PURSUANT TO THE COURT'S APRIL 5, 2004
18 ORDER, 55 PLAINTIFFS ARE COMPELLED TO ARBITRATE THEIR
19 CLAIMS.

20 THIRD, PURSUANT TO THE COURT'S JUNE 9, 2004 ORDER,
21 STIPULATION AND ORDER -- EXCUSE ME -- THE COURT'S JUNE 9,
22 2004 STIPULATION AND ORDER COMPELLING ARBITRATION OF OPT-IN
23 PLAINTIFFS FROM ALABAMA, FLORIDA, KENTUCKY AND NEVADA, THE
24 PARTIES AGREED, 11 PLAINTIFFS ARE COMPELLED TO ARBITRATE
25 THEIR CLAIMS.

1 NEXT, THE PARTIES AGREE THAT 1,700 PLAINTIFFS ARE
2 SUBJECT TO ENFORCEABLE ARBITRATION AGREEMENTS.

3 AND THOSE ARE THE ISSUES THAT THE PARTIES HAVE
4 REACHED AGREEMENT REGARDING SO FAR; IS THAT CORRECT?

5 MR. DOSKER: YOUR HONOR, ON THE LAST ONE, THE
6 17200 -- THE 1700 --

7 THE COURT: YES.

8 MR. DOSKER: -- WHICH IS, I BELIEVE, YOUR HONOR'S
9 REFERRING TO EXHIBIT E TO THE JOINT STATEMENT.

10 THE COURT: RIGHT.

11 MR. DOSKER: I WANT TO JUST EMPHASIZE --

12 THE COURT: JOINT STATEMENT IS ON PAGE TWO, 12 TO
13 15 AND EXHIBIT E.

14 MR. DOSKER: YES, YOUR HONOR. I JUST WANT TO
15 EMPHASIZE AS IS SET FORTH ON PAGE ONE OF THE JOINT
16 STATEMENT, THAT THAT LIST, WHILE THE PARTIES AGREE THAT THEY
17 HAVE ENFORCEABLE ARBITRATION AGREEMENTS UNDER SECTION TWO OF
18 THE FEDERAL ARBITRATION ACT, CINTAS VERY STRONGLY SUBMITS
19 THAT IT HAS MOVED ONLY TO STAY AS TO THEM, NOT AS TO COMPEL
20 UNDER SECTION FOUR; AND THAT, THEREFORE, THEY CAN ONLY BE
21 STAYED, NOT COMPELLED, BY THIS COURT. THE PLAINTIFFS HAVE A
22 DIFFERENT VIEW AS SET FORTH IN THEIR BRIEF.

23 THE COURT: RIGHT. WELL, WHAT I'M READING IS
24 BASICALLY WHAT YOU HAVE IN HERE, IN YOUR JOINT STATEMENT
25 THAT YOU AGREE THAT 1700 PLAINTIFFS ARE SUBJECT "TO

1 ENFORCEABLE ARBITRATION AGREEMENTS".

2 I'LL GET INTO THE LEGAL ISSUES IN TERMS IF YOU
3 HAVE AN ISSUE. BUT IS THAT WHAT YOU HAVE IN YOUR JOINT
4 STATEMENT NOT CORRECT?

5 MR. DOSKER: NO, THAT IS CORRECT.

6 THE COURT: OKAY. WELL, THEN THAT'S ALL I KNOW IF
7 IT IS CORRECT.

8 MR. DOSKER: BUT IT IS MODIFIED BY WHAT IS IN THE
9 JOINT STATEMENT, PAGE ONE, LINES 11 TO 16. AND THAT HAS THE
10 FUNDAMENTAL QUESTION OF WHAT'S THE LEGAL OUTCOME?

11 THE COURT: WHAT IS THE PURPOSE OF WHAT YOU HAVE
12 AT PARAGRAPH -- AT PAGE TWO LINES 12 TO 15 IN EXHIBIT E?

13 MR. DOSKER: THE PURPOSE OF PAGE -- OF THAT --

14 THE COURT: PAGE TWO, LINES 12 TO 15.

15 MR. DOSKER: YES, YOUR HONOR. THAT IS TO CONVEY
16 TO YOUR HONOR THAT THE PARTIES AGREE THAT THERE ARE
17 ENFORCEABLE ARBITRATION AGREEMENTS SENT TO THOSE PEOPLE BUT
18 THE DISPUTE IS OVER.

19 THE COURT: RIGHT. AND THAT'S ALL I SAID. THAT'S
20 ALL I SAID. I DON'T WANT TO GET INTO A DISCUSSION OF
21 SEMANTICS. I'M JUST READING WHAT YOU ALL HAVE PROVIDED ME
22 IN YOUR JOINT STATEMENT AND SAYING THAT'S WHAT YOU ALL HAVE
23 AT LEAST REPRESENTED TO ME THAT YOU AGREE.

24 MR. DOSKER: YES, YOUR HONOR.

25 THE COURT: I'M NOT -- I'VE NOT IDENTIFIED ALL THE

1 ISSUES YET. I HAVEN'T EVEN GOT INTO THE BEGINNING YET. I
2 JUST GOT INTO THE WHAT I CONSIDER THE AGREEMENT BASED ON
3 WHAT YOU HAVE ALL HAVE TOLD ME IN YOUR -- IN THIS JOINT
4 STATEMENT. AND SO, UM, AS I UNDERSTAND IT, THAT THAT --
5 THOSE ARE THE AGREEMENTS; IS THAT CORRECT?

6 MR. DOSKER: YES.

7 THE COURT: AS SET FORTH ARE THE PARTICULAR
8 AGREEMENTS UNDER WHAT YOU HAVE HERE AS YOU STATED ON PAGE
9 TWO --

10 MR. DOSKER: CORRECT.

11 THE COURT: -- LINES 12 TO 15.

12 MR. DOSKER: YES. SUBJECT TO WHAT WE HAVE SAID ON
13 PAGE ONE, LINES 11 TO 16, YES, YOUR HONOR.

14 THE COURT: YOU DON'T HAVE THAT IN PARAGRAPH ON
15 PAGE TWO, LINES 12 TO 15. I'M JUST READING WHAT YOU HAVE ON
16 PAGE TWO, LINES 12 TO 15, IN TERMS OF WHAT YOU'VE AGREED TO.
17 THAT'S WHAT I TOLD YOU ALL TO SUBMIT. THAT'S WHAT YOU
18 SUBMITTED. AND THAT'S WHAT YOU SAID. AND THAT'S WHAT I'M
19 SAYING NOW. OKAY.

20 ANYTHING ELSE THAT -- THAT YOU DIDN'T STATE
21 CORRECTLY?

22 MR. RUBIN: YOUR HONOR, PLAINTIFF'S AGREE THAT
23 YOUR STATEMENT OF THE AGREEMENT IS ACCURATE AND CORRECT.

24 THE COURT: OKAY. THANK YOU.

25 NOW, THE PARTIES REMAIN IN DISPUTE TO SOME EXTENT

1 REGARDING WHICH PLAINTIFFS MAY LITIGATE AND WHICH ARE
2 SUBJECT TO ENFORCEABLE ARBITRATION PROVISIONS; SPECIFICALLY,
3 FIRST, PLAINTIFF'S ARGUE THE ARBITRATION AGREEMENTS ARE
4 UNENFORCEABLE UNDER ARIZONA, LOUISIANA AND PENNSYLVANIA LAW;
5 THUS PLAINTIFFS CONTEND PLAINTIFFS FROM THOSE STATES WHICH
6 ARE, I THINK 196 PLAINTIFFS, MUST LITIGATE THEIR CLAIMS.

7 NEXT, THE PARTIES DISPUTE THE APPLICABLE LAW
8 GOVERNING CLAUSE, AND THE EFFECT OF STATE LAW ON THE
9 ENFORCEABILITY OF THE ARBITRATION AGREEMENTS AS TO TWO
10 PLAINTIFFS.

11 THIRD, PLAINTIFFS ALLEGE PROCEDURAL
12 UNCONSCIONABILITY AS TO SIX PLAINTIFFS.

13 AND THEN NEXT, DEFENDANTS SEEK TO DISMISS OR
14 TRANSFER 36 PLAINTIFFS FOR IMPROPER VENUE.

15 IS THAT CORRECT SO FAR?

16 MR. DOSKER: YES, YOUR HONOR.

17 MR. RUBIN: FROM PLAINTIFF'S PERSPECTIVE, YOUR
18 HONOR, THAT IS CORRECT. MY NOTES HAD 170 LOUISIANA, ARIZONA
19 AND PENNSYLVANIA PLAINTIFFS. BUT YOU ARE PROBABLY RIGHT.

20 THE COURT: I HAVE 196. LET ME JUST SEE. AND I'M
21 LOOKING AT PAGE TWO, YOUR JOINT STATEMENT, PAGE TWO, LINES
22 17 TO 28, AND EXHIBITS F, G AND H.

23 MR. RUBIN: I'M SURE I ADDED THEM INCORRECTLY.
24 BUT THOSE -- THOSE ARE THE LISTS. AND THEY'RE IDENTIFIED.
25 AND IF THAT'S WHAT THEY ADDED UP TO.

1 THE COURT: OKAY.

2 MR. RUBIN: IT'S WHATEVER THEY ADD UP TO.

3 THE COURT: OKAY. THANK YOU. AND SO THE
4 COURT IS, UM, --

5 MR. RUBIN: JUST DOUBLE CHECK.

6 THE COURT: MR. DOSKER?

7 MR. DOSKER: WE'LL DOUBLECHECK THE NUMBERS.

8 THE COURT: OKAY. GOOD. THANK YOU. BECAUSE
9 THAT'S ALL WE DID WAS JUST ADDED IT UP. SO IF OUR ADDITION
10 IS INCORRECT, WE'LL CORRECT THE RECORD AFTER THE RECESS.

11 MR. RUBIN: IT'S PROBABLY INCORRECT.

12 MR. DOSKER: WE'LL AGREE IT'S WHATEVER THOSE
13 EXHIBITS ADD UP TO.

14 THE COURT: AND SO FROM MY PERSPECTIVE, THE COURT
15 IS FACED WITH THE FOLLOWING SIX DISPUTED ISSUES BY THE
16 PARTIES: THE FIRST ISSUE IS WHETHER THE 1700 PLAINTIFFS
17 LISTED IN EXHIBIT E OF THE JOINT STATEMENT, WHICH THE
18 PARTIES AGREE ARE SUBJECT TO ENFORCEABLE ARBITRATION
19 AGREEMENTS, MUST BE COMPELLED TO ARBITRATE OR WHERE THEIR
20 CLAIMS MAY BE STAYED BY THIS COURT.

21 THE SECOND ISSUE IS WHETHER THE ARBITRATION
22 AGREEMENTS ARE ENFORCEABLE UNDER THE LAWS OF LOUISIANA,
23 ARIZONA AND PENNSYLVANIA.

24 THE THIRD ISSUE IS WHETHER THERE WAS PROCEDURAL
25 UNCONSCIONABILITY AS TO SIX PLAINTIFFS.

1 THE FOURTH ISSUE, WHETHER THE DEFENDANTS MAY
2 EITHER DISMISS OR TRANSFER THE CLAIMS OF 36 PLAINTIFFS.

3 THE FIFTH ISSUE IS WHETHER PLAINTIFFS MAY BE
4 GRANTED LEAVE TO AMEND THEIR FIRST AMENDED COMPLAINT.

5 AND THEN THE SIXTH ISSUE IS WHAT THE APPLICABLE
6 LAW GOVERNING CLAUSE IS REGARDING THE TWO PLAINTIFFS LISTED
7 IN EXHIBIT ONE OF THE JOINT STATEMENT.

8 WITH RESPECT TO THE SIXTH ISSUE, I WILL SAY THERE
9 IS NO BRIEFING BEFORE THE COURT ON THIS ISSUE. THE ONLY
10 EVIDENCE SUBMITTED TO THE COURT ON THE ISSUE ARE THE
11 DECLARATIONS OF MANAGER OF ACCOUNTING SERVICES FOR CINTAS
12 CORPORATION, STEVEN CHRISTENSON.

13 FROM PAYROLL RECORDS MAINTAINED BY CINTAS IN THE
14 REGULAR AND ORDINARY CASE OF ITS BUSINESS, MR. CHRISTENSON
15 HAS DETERMINED THE STATE WHERE EACH EMPLOYEE WAS WORKING
16 WHEN HE OR SHE RECEIVED HIS OR HER LAST PAYCHECK FROM
17 CINTAS. AND THAT STATE IS GEORGIA FOR BOTH PLAINTIFFS IN
18 EXHIBIT ONE.

19 SO IT'S NOT CLEAR ON WHAT BASIS PLAINTIFFS ARE
20 DISPUTING THE DETERMINATION THAT GEORGIA IS THE APPLICABLE
21 STATE, BUT YOU MAY ADDRESS THIS IN YOUR ORAL ARGUMENT IF YOU
22 CHOOSE TO. IF NOT, UM, I WILL STATE THAT IT'S MY
23 INCLINATION WITH REGARD TO THAT ISSUE TO FIND, BASED UPON
24 WHAT I HAVE, THAT GEORGIA WILL BE THE STATE FOR THOSE
25 PERSONS IN THE ABSENCE OF YOUR ADDRESSING THE ISSUE.

1 MR. RUBIN: THANK YOU, YOUR HONOR.

2 THE COURT: NOW, I WILL STATE NOW, AND SO WITH
3 RESPECT TO THE ISSUES THAT I HAVE IDENTIFIED, THOSE ARE ALL
4 THE ISSUES THAT ARE BEFORE ME AT THIS POINT; IS THAT
5 CORRECT?

6 MR. RUBIN: THAT IS CORRECT, YOUR HONOR.

7 MR. DOSKER: I BELIEVE SO, YOUR HONOR, YES.

8 THE COURT: SO I WILL NOW GO THROUGH AND STATE MY
9 INCLINATION WITH REGARD TO ISSUES NUMBER ONE THROUGH FIVE
10 SINCE I'VE ALREADY GIVEN YOU MY INCLINATION WITH RESPECT TO
11 NUMBER SIX. AND IN THE CONTEXT OF THE MOTION, FOR THE FOUR
12 MOTIONS THAT ARE PENDING BEFORE THIS COURT, AND I WILL
13 INDICATE SPECIFIC QUESTIONS AS I INDICATE THEM AS I GO ALONG
14 IF I HAVE SPECIFIC QUESTIONS, WHICH QUESTIONS THAT YOU MAY
15 WANT TO INCORPORATE INTO YOUR DISCUSSION.

16 WITH RESPECT TO THE MOTION TO STAY, I AM INCLINED
17 TO GRANT THE DEFENDANT'S MOTION TO STAY. THE COURT HAS NO
18 QUESTIONS REGARDING THIS MOTION AS THE PARTIES HAVE AGREED
19 THAT 1700 PLAINTIFFS ARE "SUBJECT TO ENFORCEABLE ARBITRATION
20 AGREEMENTS". AND SINCE SECTION THREE OF THE FEDERAL
21 ARBITRATION ACT REQUIRES THIS COURT TO STATE FURTHER
22 PROCEEDINGS ONCE IT IS SATISFIED THAT PLAINTIFF'S CLAIMS ARE
23 REFERRABLE TO ARBITRATION, THE COURT IS INCLINED TO STATE
24 THE CLAIMS OF THOSE 1700 PLAINTIFFS.

25 SECTION THREE OF THE FAA STATES, "IN ANY SUIT OR

1 PROCEEDING BROUGHT -- IN ANY OF THE COURTS OF THE UNITED
2 STATES UPON ANY ISSUE". I'M SORRY. THERE IS A
3 TYPOGRAPHICAL ERROR HERE. OKAY.

4 OKAY. "IF ANY SUIT OR PROCEEDING BE BROUGHT IN
5 ANY OF THE COURTS OF THE UNITED STATES UPON ANY ISSUE
6 REPARABLE TO ARBITRATION UNDER AN AGREEMENT IN WRITING, FOR
7 SUCH ARBITRATION, THE COURT IN WHICH SUCH SUIT IS PENDING
8 UPON BEING SATISFIED THAT THE ISSUE INVOLVED IN SUCH SUIT OR
9 PROCEEDING IS REFERRABLE TO ARBITRATION UNDER SUCH AN
10 AGREEMENT, SHALL, ON APPLICATION BY ONE OF THE PARTIES, STAY
11 THE TRIAL OF THE ACTION UNTIL SUCH ARBITRATION HAS BEEN HAD
12 IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT, PROVIDING THE
13 APPLICANT FOR THE STAY IS NOT IN DEFAULT IN PROCEEDING WITH
14 SUCH ARBITRATION. THERE IS NO ISSUE WITH RESPECT TO
15 DEFAULT".

16 SO THEREFORE THE APPROPRIATE INQUIRY FOR MOTION TO
17 STAY UNDER THE FAA IS WHETHER THE COURT IS SATISFIED THAT
18 THE ISSUE INVOLVED IN SUCH SUIT OR PROCEEDING IS REFERABLE
19 TO ARBITRATION UNDER AN ARBITRATION AGREEMENT.

20 AND, UM, WITHOUT GOING INTO ALL OF THE PROVISIONS,
21 THE COURT IS EMPOWERED TO SEVER THE PROVISIONS FOUND TO BE
22 UNCONSCIONABLE FROM AN EMPLOYMENT AGREEMENT AND ENFORCED
23 REMAINDER.

24 AND THE DEFENDANTS IN THIS CASE CONCEDE THAT SINCE
25 THE COURT HAS PREVIOUSLY FOUND UNCONSCIONABLE, THE COURT

1 RULES THE PAINES PROVISION THAT THEY WILL CONSENT TO AN
2 ORDER BY THIS COURT SEVERING THAT PROVISION FROM THE
3 EMPLOYMENT AGREEMENT; AND SECOND, SINCE THE COURT HAS ALSO
4 FOUND UNCONSCIONABLE THE TIME LIMITATION WITHIN WHICH AN
5 EMPLOYEE MUST BRING A CLAIM AS WELL AS THE PROVISIONS NOT
6 GUARANTEEING ATTORNEYS' FEES AND COSTS AS GOVERNED BY THE
7 LAWS OF CALIFORNIA, COLORADO, CONNECTICUT, MARYLAND,
8 MICHIGAN, NEW JERSEY, NEW YORK AND NORTH CAROLINA.

9 THE DEFENDANTS HAVE ALSO INDICATED THEY'RE WILLING
10 TO CONSENT TO ALSO SEVERING THOSE PROVISIONS AS WELL.

11 THIRD, THROUGH THE MEET AND CONFER PROCESS, THE
12 PARTIES HAVE AGREED THAT DEFENDANTS WILL NOT SEEK TO STAY
13 THE PROCEEDINGS AS TO OPT-IN PLAINTIFFS FROM TENNESSEE OR
14 WEST VIRGINIA.

15 NOW, WITHOUT CITATION TO ANY AUTHORITY, PLAINTIFFS
16 ARE ARGUING THAT ANY PLAINTIFF WHOSE CLAIMS ARE ARGUABLE
17 UNDER THIS COURT'S OPPORTUNITY ANALYSIS MUST BE COMPELLED TO
18 ARBITRATE AND ONLY THEN MAY THOSE PLAINTIFFS CLAIMS IN COURT
19 BE STATED UNDER SECTION THREE OF THE FAA.

20 BY THIS ARGUMENT, MY POSITION IS THE PLAINTIFFS
21 SEEM TO BE CONTEMPLATING THE OPPORTUNITY TO MAKE A
22 DETERMINATION THAT THE COURT'S AUTHORITY TO COMPEL
23 ARBITRATION PURSUANT TO SECTION FOUR OF THE FAA.

24 THE SUPREME COURT HAS HELD THAT "THE POWER TO
25 GRANT A STAY IS ENOUGH WITHOUT THE POWER TO ORDER THAT THE

1 ARBITRATION PROCEED FOR IF A STAY BE GRANTED, THE DEFENDANT
2 CAN NEVER GET RELIEF UNLESS HE PROCEEDS TO ARBITRATION".
3 AND THAT'S THE ANACONDA CASE AT 322 US 42.

4 ADDITIONALLY, THIS COURT HAS PREVIOUSLY STATED,
5 "NOTHING IN THE TEXT OF SECTION THREE SUGGESTS THAT THE
6 COURT CAN COMPEL ARBITRATION UNDER THAT SECTION". AND
7 THAT'S IN MY ORDER, APRIL 5, 2004 ORDER, PAGE 13.

8 PERSUASIVE AUTHORITY ON THIS MATTER CAN BE FOUND
9 FROM THOSE COURTS THAT GRANTED A DEFENDANT'S MOTION TO STAY
10 WITHOUT ALSO COMPELLING ARBITRATION. THE SIMS V. MARCEL
11 CHRYSLER CASE IS DIRECTLY ON POINT WITH THE CIRCUMSTANCES
12 PRESENTED IN THIS CASE. AND I FOUND THAT CASE VERY
13 PERSUASIVE.

14 IN GRANTING DEFENDANT'S MOTION TO STAY, THE
15 DISTRICT COURT HELD "THE COURT RESPECTFULLY REJECTS THE
16 PLAINTIFF'S SUGGESTION THAT, IN THIS CASE, SEVENTH CIRCUIT
17 PRECEDENT, MANDATES THAT A STATE PENDING ARBITRATION NEVER
18 CAN BE GRANTED UNLESS AND UNTIL THE DEFENDANT MOVES TO
19 COMPEL UNDER SECTION FOUR OR OTHERWISE COMMENCES ARBITRATION
20 PROCEEDINGS AGAINST ITSELF. NOTHING IN THE TEXT OF SECTION
21 THREE DIRECTS THAT RESULT. AND PLAINTIFF HAS CITED NO
22 LEGISLATIVE HISTORY IN SUPPORT OF THAT INTERPRETATION.

23 LIKEWISE, SEVENTH CIRCUIT PRECEDENT DIRECTS THAT
24 THE FILING OF A MOTION TO STAY IS A PROPER METHOD FOR THE
25 INITIAL ASSERTION OF ARBITRATION RIGHTS. SEVENTH CIRCUIT

1 TEACHING EXPRESSLY ACKNOWLEDGES THAT A LITIGANT SUCH AS
2 DEFENDANT IS OFTEN CONTENT WITH A STAY ALONE PURSUANT TO
3 SECTION THREE BECAUSE THE CASE AGAINST A DEFENDANT WILL THEN
4 BE STYMIED UNLESS THE PLAINTIFF PUSHES THE LITIGATION
5 FORWARD IN ARBITRATION.

6 AND AT LEAST FROM THE COURT'S RESEARCH ON THE
7 ISSUE, THE PARTIES BREACH ARE RATHER ABBREVIATED. IT
8 APPEARS THAT EVERY COURT THAT HAS PASSED ON THE ISSUE HAS
9 FOUND THAT A DEFENDANT NEED NOT PUSH LITIGATION FORWARD
10 AGAINST ITSELF BY ACTUALLY COMMENCING ARBITRATION TO WARRANT
11 AN OTHERWISE LEGITIMATE STAY UNDER SECTION THREE OF THE FAA.

12 AND THAT'S THE -- FOUND AT PAGE 317, FED SUP 2ND
13 838, SPECIFICALLY AT PAGE 843.

14 AND THERE ARE A NUMBER OF OTHER CASES THAT I ALSO
15 FOUND PERSUASIVE. BUT MORE IMPORTANTLY, PLAINTIFFS DO NOT
16 POINT TO ANY AUTHORITY THAT MANDATES A SIMULTANEOUS ORDER
17 COMPELLING ARBITRATION IN THE CONTEXT OF A MOTION TO STAY.
18 AND SO LONG AS THE EMPLOYMENT AGREEMENTS OF THE OPT-IN
19 PLAINTIFFS ARE ENFORCEABLE PURSUANT TO LOCAL STATE LAWS, THE
20 COURT IS INCLINED TO GRANT DEFENDANT'S MOTION TO STAY.

21 THAT'S MY INCLINATION WITH RESPECT TO THE MOTION
22 TO STAY.

23 WITH RESPECT TO THE MOTION CONCERNING COMPLIANCE,
24 THE COURT HAS THREE GLOBAL QUESTIONS IT WISHES THE PARTIES
25 TO ADDRESS IN THEIR ORAL ARGUMENTS CONCERNING PLAINTIFF'S

1 **THE COURT:** SO A FACILITATIVE NOTICE HAS SAID THAT
2 IF THESE PEOPLE ARE ALL GOING TO BE COMPELLED TO ARBITRATION
3 SO WHY -- HOW WOULD I RELY ON IT WHEN I ISSUE A FACILITATIVE
4 NOTICE THAT DIDN'T SAY THAT?

5 **MR. RUBIN:** BECAUSE THE PARAGRAPH SIX THAT I
6 QUOTED THAT DISCUSSED THE PROCEDURE WHERE THE ARBITRATORS'
7 DECISIONS ON CLASS CERTIFICATION WILL COME BACK TO YOU.

8 **THE COURT:** ALL RIGHT.

9 **MR. RUBIN:** OCCUR WHEN, AS THE PARTIES UNDERSTOOD
10 AT THE TIME, THE ARBITRATOR IS ONE WHO GOT THE CASES
11 PURSUANT TO AN ORDER COMPELLING ARBITRATION. OTHERWISE, IF
12 SOME OTHER COURT COMPELLED ARBITRATION, AN ARBITRABLE
13 DECISION WOULD GO TO THAT COURT. IF PLAINTIFFS FILED
14 ELSEWHERE, IT'S NOT CLEAR WHICH COURT IT WOULD GO TO.

15 WE WILL FILE THE ARBITRATION CLAIMS BEFORE JUSTICE
16 MYERSON. AND WE WILL TRY TO HAVE THEM CONSOLIDATED AND
17 HEARD TOGETHER. WE'RE TRYING TO AVOID UNNECESSARY
18 LITIGATION OVER ARBITRATION VENUE.

19 BUT YOUR STATEMENT, YOUR APPROVAL OF THE STATEMENT
20 THAT YOU WILL DECIDE CLASS CERTIFICATION ON REVIEW OF THE
21 ARBITRATOR'S DECISION NECESSARILY REFLECTED YOUR
22 UNDERSTANDING THAT YOU WOULD BE COMPELLING THE PLAINTIFFS'
23 NON-ERISA CLAIMS TO THE ARBITRATION THAT IS COMING BACK TO
24 YOU. OTHERWISE, IT WOULD BE COMING BACK --

25 **THE COURT:** THE ONES THAT I COMPEL ARBITRATION OF.

1 NOW, HAVING MOVED FOR RECONSIDERATION AND CHANGED THE GROUND
2 RULES, PLAINTIFF IS TRYING TO CONCOCT AN ARGUMENT BASED ON A
3 CMC, AN ILLUSION OF A CMC STATEMENT THAT SOMEHOW CINTAS GAVE
4 UP A CLEAR STATUTORY RIGHT TO MAKE THE MOTION THAT IT HAS
5 MADE AND WHICH IS PENDING BEFORE YOU NOW. SO FOR THAT
6 ADDITIONAL REASON, YOUR HONOR, YOUR HONOR'S ADDITIONAL YOUR
7 HONOR'S ORIGINAL ASSESSMENT WHEN YOU TOOK THE BENCH THIS
8 AFTERNOON IS CORRECT.

9 THE COURT: MR. RUBIN, IS THERE ANY AUTHORITY THAT
10 YOU CAN CITE TO WHERE A COURT CAN COMPEL ARBITRATION WITHOUT
11 A MOTION TO COMPEL UNDER SECTION FOUR? IF SO, I'M GOING TO
12 GIVE YOU THE OPPORTUNITY TO PROVIDE IT TO ME AND LET MR. --
13 UM, COUNSEL.

14 MR. DOSKER: DOSKER. THANK YOU.

15 THE COURT: I'M SORRY -- RESPOND TO IT BECAUSE IT
16 JUST SEEMS TO ME THAT YOU'RE ASKING FOR A NOVEL APPLICATION
17 OF SECTION THREE. AND I, AND I HONESTLY AND IT COULD BE
18 THAT IT'S THE LATENESS OF THE HOUR. WE'VE BEEN IN COURT ALL
19 DAY. BUT I -- I'M JUST NOT -- I UNDERSTAND WHAT YOU'RE
20 ARGUING BUT WHAT YOU'RE POINTING ME TO, I'M NOT PERSUADED
21 SAYS THAT.

22 MR. RUBIN: YOUR HONOR --

23 THE COURT: I DON'T. I, UM, AND I GUESS MAYBE THE
24 HEART OF THIS ALL THIS FOR ME, TOO, THAT'S MOST TROUBLING IS
25 THAT YOU ALL ARE THE ONES THAT SUBMITTED THE STIPULATION.

1 OUR HEARING.

2 MR. RUBIN: THANK YOU, YOUR HONOR.

3 AND THANK YOU ALSO TO THE COURT REPORTER FOR
4 STICKING AROUND AND TO YOUR CLERK. I KNOW IT'S LATE. I
5 APPRECIATE IT.

6 THE COURT: IT IS LATE. OKAY. YOU ALL HAVE A
7 NICE EVENING.

8 MR. DOSKER: THANK YOU, YOUR HONOR.

9 MR. RUBIN: THANK YOU, YOUR HONOR.

10 MR. DOSKER: YOU, TOO.

11 (WHEREUPON, AT 5:45 P.M. THE PROCEEDINGS CONCLUDED.)

12 COURT REPORTER'S CERTIFICATE

13 I, STARR A. WILSON, CSR NO. 2462, UNITED STATES
14 DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, DO HEREBY
15 CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE
16 RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

17 I CERTIFY THAT THE TRANSCRIPT FEES AND FORMAT
18 COMPLY WITH THOSE PRESCRIBED BY THE COURT AND JUDICIAL
19 CONFERENCE OF THE UNITED STATES.

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STARR A. WILSON, CSR NO. 2462